



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR95-491

Dear Ms. Cunningham:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32528.

The City of Irving (the "city") received an open records request for records "pertaining to animal trap rentals from the Irving Animal Control Department, by individuals residing on DeWitt Street, in the City of Irving, Texas, for the month of February, 1995." You submitted to this office as responsive to the request one document that identifies one individual. You contend that the information at issue is excepted from disclosure under the informer's privilege aspect of section 552.101 of the Government Code for the following reasons:

It is an offense pursuant to section 6-3 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas to allow an animal, including a cat, to run at large. Because it is difficult for animal control to capture cats in the same manner as loose dogs, a person complaining of a violation of this section often utilizes a cat trap. As the person complaining of such a violation is reporting an infraction of the law, the city of Irving maintains that the person has informant status.

For information to come under the protection of the informer's privilege, the information reported by the alleged informant must relate to a violation of a civil or criminal statute. See Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983).

The privilege excepts the informer's statement only to the extent necessary to protect an informer's identity. Open Records Decision Nos. 549 (1990) at 5, 202 (1978) at 2 (informer's privilege exception is not applicable when the identity of the informer is known to the subject of the communication). In *Rovario v. United States*, 353 U.S. 53 (1957), the United States Supreme Court stated:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the *identity of persons who furnish information of violations of law* to officers charged with enforcement of that law. . . .

353 U.S. at 59 (emphasis added).

You have not supplied information showing that the individual identified in the responsive documents furnished information about a violation of the law.¹ For example, you have not informed us that complaining about violation of the city ordinance is a requirement for the city to provide an animal trap, nor have you stated that all individuals who complain of animals running at large actually rent animal traps from the city.² You did not provide information showing that the particular individual identified in the documents has actually reported a violation of the city ordinance. Therefore, you have not demonstrated that the information may be excepted from disclosure under the informer's privilege. The document at issue must be released.

¹You sent this office a letter, dated April 13, 1995, that stated you believe the requestor is trying to obtain the names of individuals who complained about violations of the city ordinance:

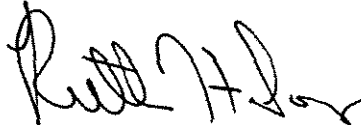
In further support for this position, the City of Irving submits an additional request by [the requestor], in which she does ask for records which prior Attorney General decisions have clearly excepted from disclosure. This additional request by [the requestor] is provided to your office solely to illuminate her motives in regard to the earlier request as prior opinions have established that informant's names are protected. In addition, there are no records responsive to this second request.

No request for records was attached to your letter, but we note that a requestor's suspected motives are not relevant to an inquiry under chapter 552. Gov't Code § 552.223; Open Records Decision No. 542 (1990). Thus, the fact that the requestor has made other requests under the Open Records Act is not relevant to this inquiry.

²We note that you refer to the traps as animal traps and cat traps. We assume that the traps may be used to capture animals other than cats, though cat-trapping may be their primary use.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID #32528

Enclosure: Submitted document

cc: Ms. Sherry Huse
Law Office of G. Otstott
3611 Fairmount
Dallas, Texas 75219
(w/o enclosure)